

PATENT

Attorney Docket No. MYCOLOGX-06279

REMARKS

Claims 1-21 are currently pending. Applicants thank the Examiner for indicating that Claims 1-12 are free of the prior art and would be allowable if amended to overcome the objections set forth below. In an Office Action mailed September 30, 2003, the Examiner raised a number of issues, listed below in the order they are addressed herein:

- 1) Claims 1-21 are objected to because of informalities;
- 2) Claims 13-21 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the written description requirement;
- 3) Claims 13-21 are rejected under 35 USC § 112, first paragraph, as allegedly failing to comply with the enablement requirement;
- 4) Claims 14, 15, and 19-21 are rejected under 35 USC § 112, second paragraph, as allegedly indefinite;
- 5) Claims 13, and 16-21 are rejected under 35 USC § 102(b), as allegedly anticipated by Marchand *et al.* (*Eur. J. Biochem.*, 184:455-464, 1989); and
- 6) Claims 13-21 are rejected under 35 USC § 102(b), as allegedly anticipated by Moigne (WO 98/10656 = U.S. Patent No. 6,346,252) or Moore *et al.* (U.S. Patent No. 5,945,315).

Applicants have amended Claims 1 and 6, and have canceled Claims 13-21, in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments. Applicants reserve the right to prosecute the original, similar, or broader claims in one or more future application(s). These amendments do not introduce new matter and are not intended to narrow the scope of any of the claims within the meaning of *Festo*.¹

Applicants note that the Examiner has not provided a copy of Form PTO-1449 indicating that the Examiner has considered the 70 references submitted by Applicants on October 1, 2001 as part of their Information Disclosure Statement. Applicants respectfully request that the references be considered by the Examiner prior to allowing the instant application.

¹ *Festo Corp. v. Shoketsu Kinzoku Kogyo Kabushiki Co.*, 535 U.S. 722, 122 S.Ct. 1831, 1838, 62 USPQ2d 1705, 1710 (2002).

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1) The Claims are Free of Informalities

The Examiner has objected to Claims 1 and 6 because the term 2-nitro-thiobenzoate has been misspelled. Applicants thank the Examiner for catching this typographical error. Accordingly, Applicants have amended Claims 1 and 6 to recite "2-nitro-thiobenzoate."

2-6) The Claims are Allowable

The Examiner has rejected Claims 13-21 under 35 USC § 112 and under 35 USC § 102(b). Applicants respectfully disagree. Nonetheless, Applicants have canceled Claims 13-21, in order to further the prosecution of the present application and Applicants' business interests, yet without acquiescing to the Examiner's arguments, and while reserving the right to prosecute the originally filed and/or similar claims in the future.

CONCLUSION

Applicants respectfully request that a timely Notice of Allowance be issued in this case. However, should the Examiner believe that a telephone interview would aid in the prosecution of this application, Applicants encourage the Examiner to call the undersigned collect.

Dated: October 30, 2003

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